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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

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9 LAURICE MCCURDY, } 2:08-CV-01742-PMP-PAL  
10 Plaintiff, }  
11 vs. } **ORDER**  
12 Officer Lisa Alvarez, et al., }  
13 Defendants. }  
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15 On March 4, 2011, this Court entered an Order (Doc. #115) granting  
16 Defendant's Motion for Summary Judgment (Doc. #104). The Court's Order (Doc.  
17 #115) was predicated in part upon the failure of Plaintiff McCurdy to file a timely  
18 response in opposition to Defendants' motion for summary judgment. However, it  
19 appears that on the same date, March 4, 2011, Plaintiff McCurdy in fact filed an  
20 Response in Opposition to Defendants' Motion for Summary Judgment (Doc. #114).  
21 As a result, the Court finds it appropriate to grant Plaintiff McCurdy's Motion for  
22 District Judge to Reconsider (Doc. #118) filed March 23, 2011, and to consider  
23 Defendants' Motion for Summary Judgment solely on its merits.

24 Specifically, the Court finds that Defendants are entitled to judgment as a  
25 matter of law because Plaintiff McCurdy has failed to demonstrate the existence of a  
26 genuine issue of material fact regarding the claims set forth in his complaint. The

1 record does not support Plaintiff's claim that Defendants' used excessive force, but  
2 instead shows that they used reasonable force necessary to restrain Plaintiff while  
3 advancing legitimate penological interests to insure the order, safety and security of  
4 the jail and its occupants. Neither does the record support Plaintiff McCurdy's  
5 contention that any Defendant filed a false incident report.

6 Moreover, Defendants are entitled to qualified immunity because their  
7 conduct did not violate clearly established statutory or constitutional rights of which  
8 a reasonable person would have known. Pearson v. Callahan 555 U.S. 223(2009).  
9 In addition, Defendants are entitled to discretionary immunity pursuant to N.R.S.  
10 41.032.

11 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for  
12 Reconsideration (Doc. #118) is **GRANTED** to the foregoing extent.

13 **IT IS FURTHER ORDERED** that Defendants' Motion for Summary  
14 Judgment (Doc. #104) is **GRANTED** on its merits and judgment is hereby entered  
15 in favor of Defendants and against Plaintiff.

16 **IT IS FURTHER ORDERED** that Plaintiff's Motion for District Judge  
17 to Reconsider the Order Denying Motion for Recusal (Doc. #119) is **DENIED**.

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19 DATED: March 28, 2011.

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PHILIP M. PRO  
23 United States District Judge  
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